THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition Nos. 4328, 8668, 8669, 8670, 8674, 8675 and 8816 of 2006

Date: 31.10.2007

W.P. No. 4328 of 2006

Between:

Ch. Rajagopala Rao.

..... PETITIONER

AND

The Bharat Sanchar Nigam Limited, rep. by its Chairman and Managing Director,
New Delhi and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition Nos. 4328, 8668, 8669, 8670, 8674, 8675 and 8816 of 2006

Common Order:

Since the facts involved in all the writ petitions are similar in nature, they are being disposed of by this common order.

Questioning the action of the respondent-BSNL in revising their pay scale in the post of Telephone Mechanic, by taking the substantive pay scale of Regular Mazdoor, instead of the substantive pay scale of Lineman, and ordering for recovery of the excess amount paid, the petitioners filed the present writ petitions.

The petitioners are now working as Telephone Mechanics in the respondent-BSNL. Their grievance in the writ petitions is that while they were working as Regular Mazdoors, they were given training in Telephone Mechanic, but because of non-availability of the vacancies in the said post, they were not given any posting as Telephone Mechanics. While so, an agreement was entered into between the respondent-BSNL and three Staff Federations on 01.12.1998. As per Clause 3 of the said agreement, all Group-D employees (except TSMs), who are qualified and trained for Telephone Mechanics but not absorbed as such for want of vacancies will be placed in the substantive pay scale of Linemen till such time vacancies in the post of Telephone Mechanics are available. In pursuance of the said agreement, the petitioners were temporarily placed in the Lineman cadre in the time scale of Rs.2750-4400/- with effect from 31.12.1998 as an interim

measure. Since the pay scale of Linemen was revised from Rs.2750-4400/- to Rs.3050-4590/- with effect from 10.10.1997 retrospectively, vide DOT Letter No.1-36/97-MPP, dated 28.09.2000, the said pay scale of the petitioners was also revised, and they were placed in the upgraded pay scale of Rs.3050-4590/- with effect from 31.12.1998.

Subsequently, on availability of Telephone Mechanic posts, the petitioners were promoted permanently as Telephone Mechanics, and their pay was fixed in that cadre by taking into consideration their upgraded pay scale in the cadre of Lineman. Later on, the respondent-BSNL, based on the letter dated 13.04.2005, issued by the Accounts Officer, Office of the Chief General Manager, Telecommunications, re-fixed the pay of the petitioners by taking into consideration the pay scale of Regular Mazdoor, and by reason of the orders impugned in the writ petition, ordered to recover the excess amounts paid to the petitioners by virtue of wrong fixation of pay in the Telephone Mechanic post, and the recovery has also been effected. Aggrieved by the said action of the respondent-BSNL, the petitioners filed the present writ petitions.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondent-BSNL.

The main contention of the petitioners is that their pay has to be fixed in the cadre of Telephone Mechanic by taking into consideration their upgraded pay scale in the cadre of Lineman instead of taking the scale of Regular Mazdoor. I am unable to accept this contention of the petitioners for the reason that the petitioners, while working as Regular Mazdoors, were placed in the Lineman cadre as a temporary measure due to non-availability of vacancies of Telephone Mechanic, and subsequently, on availability of Telephone Mechanic posts, they were promoted to the said post on permanent basis. Though the respondent-BSNL, initially fixed the pay of the petitioners in the cadre of Telephone Mechanic by taking into consideration their up-graded pay scale in the

cadre of Lineman, the fact remains, the Accounts Officer in the office of the Chief General Manager, Telecommunications, has addressed a letter dated 13.04.2005, to all the Accounts Officers of the local units, clarifying that the fixation of pay of Regular Mazdoors/Grade-D, placed in the pay scale of Lineman as an interim measure, has to be made under FR 22 (1)(a)(1) on their promotion as Telephone Mechanic based on the substantive pay drawn as Regular Mazdoor/other Grade-D only. The respondents, having realized that the pay of the petitioners was wrongly fixed, re-fixed their pay in terms of FR 22(1)(a)(1) as advised by the Accounts Officer, by taking into consideration the pay scale of Regular Mazdoor, which is a substantive post, and from which post the petitioners were promoted to the post of Telephone Mechanic, and therefore, no exception can be taken to the action of the respondents in re-fixing the pay of the petitioners in terms of FR 22(1)(a)(1).

At this stage, learned counsel for the petitioners submits that in view of the agreement entered into between the respondent-BSNL and three Staff Federations on 01.12.1998, the pay scale of the petitioners attached to the post of Lineman, in which they were working at the time of promotion to the post of Telephone Mechanic, has to be taken into consideration for fixation of their pay in the promotion post of Telephone Mechanic, but the respondent-BSNL, ignoring the higher pay scale, attached to the post of Lineman, have re-fixed their pay taking into consideration the Regular Mazdoor scale, which is illegal and arbitrary. Neither the writ petitioners nor the respondent-BSNL placed any material before this Court to show that under what circumstances the respondent-BSNL has entered into such an agreement with three Staff Federations, and whether the respondent-BSNL, at the time of entering into the agreement with the three Staff Federations, has given any assurance to the petitioners about protection of their pay scale attached to the post of Lineman upon their promotion subsequently, and

particularly when it is the case of the respondent-BSNL that the pay of the petitioners was re-fixed in accordance with FR 22 (1)(a)(1). In the absence of any material placed before this Court with reference to the agreement entered into by the respondent-BSNL with the trade unions, this Court cannot go into that issue, for the said issue has to be determined by the respondent-BSNL in the light of the agreement, which they have entered into with the trade Unions.

In the circumstances, learned counsel for the petitioners wants to make a representation to the General Manager, Telecom (BSNL), West Godavari, Telecom District, Eluru. It is open to the petitioners to make a representation to the General Manager, Telecom (BSNL), West Godavari, Telecom District, Eluru, by bringing all the said facts to his notice, and if any such representation is made, he is at liberty to consider the same and take appropriate action on this issue.

With the above observation, the writ petitions are dismissed. No costs.

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N.V. RAMANA, J.

Date: 31.10.2007
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